

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION

4 DAVID AMSLER, ROBERTO § CIVIL ACTION NO:
5 AVILA, JOSE BENITEZ, DUSTIN §
6 BOOKHOUT, ROLANDO CASTRO, § 1:16-cv-01121
7 CHACE CORBETT, GREG GAMBY, §
8 DUSTIN GUTKOWSKI, DAMON § JUDGE
9 HODGE, ROBBY KARL, LINDSEY §
10 ALLENTIA LLOYD, JACOB MARTIN, §
11 CHRIS MAYS, HERMAN MCCORD, §
12 COLIN PADILLA, PHILIP POLLARD, § MAGISTRATE JUDGE
13 BRENTON ROBINSON, WALTER A. §
14 RUSH, III, TIM SPICER, ANTHONY §
15 TATE, JEFFREY VOTAW, AND §
16 TERRY WATSON §
17 ON BEHALF OF THEMSELVES AND §
18 ALL OTHERS SIMILARLY SITUATED §

19 *Plaintiffs*

20 v.

21 COMPLAINT

22 COLLECTIVE ACTION FOR CLAIMS
23 UNDER FAIR LABOR STANDARDS
24 ACT [29 U.S.C. § 201 ET SEQ.]

25 FT FITNESS OPCO, LLC, TXFF1 LLC, §
26 TXFF2 LLC, TXFF3 LLC, TXFF4 LLC, §
27 TXFF5 LLC, TEXAS FAMILY §
28 FITNESS 6 LLC, TXFF7 LLC, TEXAS §
29 FAMILY FITNESS 8 LLC, TXFF9 LLC, §
30 TEXAS FAMILY FITNESS 10 LLC, §
31 TEXAS FAMILY FITNESS 11 LLC, §
32 TEXAS FAMILY FITNESS OF §
33 CARROLLTON LLC, TEXAS FAMILY §
34 FITNESS OF MESQUITE LLC, §
35 TXFFPE LLC, AND TEXAS FAMILY §
36 FITNESS OF WHITE ROCK LLC §

37 *Defendants*

38 STATE OF TEXAS

39 COMPLAINT

40 Plaintiffs, DAVID AMSLER, ROBERTO AVILA, JOSE BENITEZ, DUSTIN
41 BOOKHOUT, ROLANDO CASTRO, CHACE CORBETT, GREG GAMBY, DUSTIN

1 **GUTKOWSKI, DAMON HODGE, ROBBY KARL, LINDSEY ALLENTIA LLOYD, JACOB**
2 **MARTIN, CHRIS MAYS, HERMAN MCCORD, COLIN PADILLA, PHILIP POLLARD,**
3 **BRENTON ROBINSON, WALTER A. RUSH, III, TIM SPICER, ANTHONY TATE,**
4 **JEFFREY VOTAW, AND TERRY WATSON** (collectively "Plaintiffs"), on behalf of themselves
5 and all similarly situated as specifically referenced herein, allege as follows:
6

7 **I. JURISDICTION**

8
9 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
10 1331 and 1343(3) as the controversy arises under the laws of the United States. Specifically, the
11 claim arises under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.* ("FLSA").
12

13 **II. VENUE**

14 2. Venue is proper pursuant to 28 U.S.C. §1391(b) because the Defendants are
15 domiciled in this District or a substantial part of the events or omissions giving rise to this claim
16 occurred in this District.

17 3. Plaintiffs are and/or formerly were General Managers and Assistant General
18 Managers (hereinafter collectively "Managers"), and Sales Counselors and Personal Trainers
19 (hereinafter collectively "Personal Trainers") who have worked unpaid overtime hours for
20 Defendants, **FT FITNESS OPCO, LLC, TXFF1 LLC, TXFF2 LLC, TXFF3 LLC, TXFF4 LLC,**
21 **TXFF5 LLC, TEXAS FAMILY FITNESS 6 LLC, TXFF7 LLC, TEXAS FAMILY FITNESS**
22 **8 LLC, TXFF9 LLC, TEXAS FAMILY FITNESS 10 LLC, TEXAS FAMILY FITNESS 11**
23 **LLC, TEXAS FAMILY FITNESS OF CARROLLTON LLC, TEXAS FAMILY FITNESS OF**
24 **MESQUITE LLC, TXFFPE LLC, TEXAS FAMILY FITNESS OF WHITE ROCK LLC**
25 (hereinafter collectively "TEXAS FAMILY FITNESS"), in the operation and maintenance of the
26
27
28

1 Defendants' health and fitness clubs.

2 4. Plaintiffs have worked for the Defendants and are informed and believe that the
3 Defendants own and operate health and fitness clubs in the States of Texas and Kansas.
4

5 5. Plaintiffs bring these claims individually and as a collective action under the Fair
6 Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of Managers and Trainers, none of
7 which positions are exempt from the overtime provisions of the FLSA (hereinafter "FLSA Collective
8 Members").
9

10 6. Plaintiffs allege, on behalf of themselves and all similarly situated Managers and
11 Trainers, that the Defendants unlawfully classified them as exempt from overtime payments under
12 Federal and State laws and/or failed and refused to pay overtime payments to Plaintiffs and the
13 proposed FLSA Collective Members for all overtime worked, notwithstanding that the Plaintiffs and
14 the proposed FLSA Collective Members are not and were not exempt and are and have been entitled
15 to overtime pay for all overtime worked, and further that the Defendants failed to record and
16 maintain time records of hours worked by the Managers and Trainers as required by law.
17

18 7. Plaintiffs allege that the Defendants' practices violated and continue to violate the
19 FLSA, 29 U.S.C. §§201, 27, *et seq.* Plaintiffs further allege that the collective action claims are for
20 overtime compensation, punitive damages, liquidated damages, interest, and attorneys' fees and
21 costs under the FLSA 29 U.S.C. §207 and 216(b).
22

23 8. Plaintiffs allege that the Defendants' acts were in accordance with and represent their
24 official policies or those whose edicts or acts may fairly be said to represent the official policies of
25 the Defendants.
26

27 9. Plaintiffs allege that the Defendants willfully committed, ordered, directed,
28

1 supervised, allowed, planned, ratified, concealed, organized, or otherwise participated in the
2 unlawful acts complained of herein.

3 4 **III. PARTIES**

5 **A. Plaintiffs**

6 10. Plaintiff, DAVID AMSLER, is a resident of Plano, Texas, and was employed by
7 TEXAS FAMILY FITNESS from on or about April 19, 2011 to on or about December 2015, at a
8 TEXAS FAMILY FITNESS located in the State of Texas as a General Manager, Assistant General
9 Manager and/or Sales Counselor. As a General Manager, Assistant General Manager and/or Sales
10 Counselor, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
11 day, but failed to receive all minimum wages, including all overtime compensation to which he was
12 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
13 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
14 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
15 without signing in or out or any documentation agreeing to the change in actual hours worked by
16 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
17 any compensation for the hours he actually worked.
18
19
20

21 11. Plaintiff, ROBERTO AVILA, is a resident of Lewisville, Texas, and was employed
22 by TEXAS FAMILY FITNESS from on or about August 15, 2012 to on or about March 31, 2016,
23 at a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
24 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
25 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
26 minimum wages, including all overtime compensation to which he was entitled for the hours worked
27
28

1 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
2 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
3 required to have actual hours worked corrected to show he worked less hours without signing in or
4 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
5 also asked to work on non scheduled days while off the clock and not receive any compensation for
6 the hours he actually worked.
7

8
9 12. Plaintiff, JOSE BENITEZ, is a resident of Dallas, Texas, and was employed by
10 TEXAS FAMILY FITNESS from on or about June 2015 to on or about October 2, 2015, at a
11 TEXAS FAMILY FITNESS located in the State of Texas as an Assistant General Manager. As an
12 Assistant General Manager, Plaintiff regularly worked in excess of forty (40) hours per week and
13 eight (8) hours per day, but failed to receive all minimum wages, including all overtime
14 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
15 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
16 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
17 to show he worked less hours without signing in or out or any documentation agreeing to the change
18 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
19 off the clock and not receive any compensation for the hours he actually worked.
20
21

22 13. Plaintiff, DUSTIN BOOKHOUT, is a resident of Frisco, Texas, and was employed
23 by TEXAS FAMILY FITNESS from on or about September 24, 2012 to on or about May 2, 2014,
24 at a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager, Assistant
25 General Manager and/or Sales Counselor. As a General Manager, Assistant General Manager and/or
26 Sales Counselor, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours
27
28

1 per day, but failed to receive all minimum wages, including all overtime compensation to which he
2 was entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per
3 day. Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the
4 clock. Plaintiff was regularly required to have actual hours worked corrected to show he worked less
5 hours without signing in or out or any documentation agreeing to the change in actual hours worked
6 by Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not
7 receive any compensation for the hours he actually worked.
8
9

10 14. Plaintiff, ROLANDO CASTRO, is a resident of Frisco, Texas, and was employed
11 by TEXAS FAMILY FITNESS from on or about May 2013 to on or about November 2013, at a
12 TEXAS FAMILY FITNESS located in the State of Texas as a General Manager, Assistant General
13 Manager and/or Sales Counselor. As a General Manager, Assistant General Manager, and/or Sales
14 Counselor. Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
15 day, but failed to receive all minimum wages, including all overtime compensation to which he was
16 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
17 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
18 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
19 without signing in or out or any documentation agreeing to the change in actual hours worked by
20 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
21 any compensation for the hours he actually worked.
22
23
24

25 15. Plaintiff, CHASE CORBETT, is a resident of Frisco, Texas, and was employed by
26 TEXAS FAMILY FITNESS from on or about January 1, 2016 to on or about August 20, 2016, at
27 a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
28

1 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
2 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
3 minimum wages, including all overtime compensation to which he was entitled for the hours worked
4 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
5 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
6 required to have actual hours worked corrected to show he worked less hours without signing in or
7 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
8 also asked to work on non scheduled days while off the clock and not receive any compensation for
9 the hours he actually worked.
10
11

12 16. Plaintiff, GREG GAMBY, is a resident of Frisco, Texas, and was employed by
13 TEXAS FAMILY FITNESS from on or about January 27, 2014 to on or about January 31, 2016, at
14 a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
15 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
16 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
17 minimum wages, including all overtime compensation to which he was entitled for the hours worked
18 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
19 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
20 required to have actual hours worked corrected to show he worked less hours without signing in or
21 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
22 also asked to work on non scheduled days while off the clock and not receive any compensation for
23 the hours he actually worked.
24
25
26

27 17. Plaintiff, DUSTIN GUTKOWSKI, is a resident of Allen, Texas, and was employed
28

1 by TEXAS FAMILY FITNESS from on or about July 2, 2013 to on or about September 20, 2016,
2 at a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
3 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
4 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
5 minimum wages, including all overtime compensation to which he was entitled for the hours worked
6 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
7 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
8 required to have actual hours worked corrected to show he worked less hours without signing in or
9 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
10 also asked to work on non scheduled days while off the clock and not receive any compensation for
11 the hours he actually worked.
12
13
14

15 18. Plaintiff, DAMON HODGE, is a resident of Irving, Texas, and was employed by
16 TEXAS FAMILY FITNESS from on or about October 2013 to on or about March 2015, at a TEXAS
17 FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant General
18 Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly worked in
19 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
20 wages, including all overtime compensation to which he was entitled for the hours worked in excess
21 of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to clock out for
22 lunch and asked to stay and still work while off the clock. Plaintiff was regularly required to have
23 actual hours worked corrected to show he worked less hours without signing in or out or any
24 documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was also asked
25 to work on non scheduled days while off the clock and not receive any compensation for the hours
26
27
28

1 he actually worked.

2 19. Plaintiff, LINDSEY ALLENTIA LLOYD, is a resident of Allen, Texas, and was
3 employed by TEXAS FAMILY FITNESS, off and on, from on or about November 2009 to on or
4 about December 2013, at a TEXAS FAMILY FITNESS located in the State of Texas as a General
5 Manager and/or Assistant General Manager. As a General Manager and/or Assistant General
6 Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
7 day, but failed to receive all minimum wages, including all overtime compensation to which he was
8 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
9 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
10 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
11 without signing in or out or any documentation agreeing to the change in actual hours worked by
12 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
13 any compensation for the hours he actually worked.
14

15 20. Plaintiff, ROBBY KARL, is a resident of Frisco, Texas, and was employed by
16 TEXAS FAMILY FITNESS from on or about September 11, 2013 to on or about June 2015, at a
17 TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
18 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
19 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
20 minimum wages, including all overtime compensation to which he was entitled for the hours worked
21 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
22 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
23 required to have actual hours worked corrected to show he worked less hours without signing in or
24
25
26
27
28

1 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
2 also asked to work on non scheduled days while off the clock and not receive any compensation for
3 the hours he actually worked.
4

5 21. Plaintiff, JACOB MARTIN, is a resident of Frisco, Texas, and was employed by
6 TEXAS FAMILY FITNESS from on or about August 31 2013 to on or about February 4, 2015, at
7 a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
8 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
9 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
10 minimum wages, including all overtime compensation to which he was entitled for the hours worked
11 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
12 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
13 required to have actual hours worked corrected to show he worked less hours without signing in or
14 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
15 also asked to work on non scheduled days while off the clock and not receive any compensation for
16 the hours he actually worked.
17
18
19

20 22. Plaintiff, CHRIS MAYS, is a resident of Colony, Texas, and was employed by
21 TEXAS FAMILY FITNESS from on or about February 2013 to on or about February 2014, at a
22 TEXAS FAMILY FITNESS located in the State of Texas as a General Manager, Assistant General
23 Manager, and/or Personal Trainer. As a General Manager, Assistant General Manager, and/or
24 Personal Trainer. Plaintiff regularly worked in excess of forty (40) hours per week and eight (8)
25 hours per day, but failed to receive all minimum wages, including all overtime compensation to
26 which he was entitled for the hours worked in excess of forty (40) hours per week and/or eight (8)
27
28

1 hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and still work while
2 off the clock. Plaintiff was regularly required to have actual hours worked corrected to show he
3 worked less hours without signing in or out or any documentation agreeing to the change in actual
4 hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while off the
5 clock and not receive any compensation for the hours he actually worked.
6

7 23. Plaintiff, HERMAN MCCORD, is a resident of Grand Prairie, Texas, and was
8 employed by TEXAS FAMILY FITNESS from on or about November 2014 to on or about April
9 2015, at a TEXAS FAMILY FITNESS located in the State of Texas as an Assistant General
10 Manager. As an Assistant General Manager, Plaintiff regularly worked in excess of forty (40) hours
11 per week and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
12 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
13 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
14 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
15 to show he worked less hours without signing in or out or any documentation agreeing to the change
16 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
17 off the clock and not receive any compensation for the hours he actually worked.
18
19
20

21 24. Plaintiff, COLIN PADILLA, is a resident of Chin, California, and was employed by
22 TEXAS FAMILY FITNESS from on or about to on or about , at a TEXAS FAMILY FITNESS
23 located in the State of Texas as a General Manager and/or Assistant General Manager. As a General
24 Manager and/or Assistant General Manager, Plaintiff regularly worked in excess of forty (40) hours
25 per week and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
26 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
27
28

1 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
2 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
3 to show he worked less hours without signing in or out or any documentation agreeing to the change
4 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
5 off the clock and not receive any compensation for the hours he actually worked. I

7 25. Plaintiff, PHILIP POLLARD, is a resident of Ft. Walton Beach, Florida, and was
8 employed by TEXAS FAMILY FITNESS from on or about December 15, 2010 to on or about
9 October 20, 2013, at a TEXAS FAMILY FITNESS located in the State of Texas as a General
10 Manager and/or Assistant General Manager. As a General Manager and/or Assistant General
11 Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
12 day, but failed to receive all minimum wages, including all overtime compensation to which he was
13 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
14 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
15 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
16 without signing in or out or any documentation agreeing to the change in actual hours worked by
17 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
18 any compensation for the hours he actually worked.

22 26. Plaintiff, BRENTON ROBINSON, is a resident of Springville, Alabama, and was
23 employed by TEXAS FAMILY FITNESS from on or about November 2012 to on or about June
24 2014, at a TEXAS FAMILY FITNESS located in the State of Texas as an Personal Trainer and
25 Assistant General Manager. As a Personal Trainer and Assistant General Manager, Plaintiff regularly
26 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
27
28

1 minimum wages, including all overtime compensation to which he was entitled for the hours worked
2 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
3 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
4 required to have actual hours worked corrected to show he worked less hours without signing in or
5 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
6 also asked to work on non scheduled days while off the clock and not receive any compensation for
7 the hours he actually worked.
8
9

10 27. Plaintiff, WALTER A. RUSH, III, is a resident of Little Elm, Texas, and was
11 employed by TEXAS FAMILY FITNESS from on or about June 16, 2006 to on or about October
12 18, 2013, at a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or
13 Assistant General Manager. As a General Manager and/or Assistant General Manager, Plaintiff
14 regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to
15 receive all minimum wages, including all overtime compensation to which he was entitled for the
16 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff
17 was asked to clock out for lunch and asked to stay and still work while off the clock. Plaintiff was
18 regularly required to have actual hours worked corrected to show he worked less hours without
19 signing in or out or any documentation agreeing to the change in actual hours worked by Plaintiff.
20 Plaintiff was also asked to work on non scheduled days while off the clock and not receive any
21 compensation for the hours he actually worked.
22
23
24

25 28. Plaintiff, TIM SPICER, is a resident of Red Oak, Texas, and was employed by
26 TEXAS FAMILY FITNESS from on or about August 31, 2008 to on or about October 20, 2013, at
27 a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
28

1 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
2 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
3 minimum wages, including all overtime compensation to which he was entitled for the hours worked
4 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
5 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
6 required to have actual hours worked corrected to show he worked less hours without signing in or
7 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
8 also asked to work on non scheduled days while off the clock and not receive any compensation for
9 the hours he actually worked.
10
11

12 29. Plaintiff, ANTHONY TATE, is a resident of Plano, Texas, and was employed by
13 TEXAS FAMILY FITNESS from on or about January 6, 2006 to on or about October 13, 2013, at
14 a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
15 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
16 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
17 minimum wages, including all overtime compensation to which he was entitled for the hours worked
18 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
19 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
20 required to have actual hours worked corrected to show he worked less hours without signing in or
21 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
22 also asked to work on non scheduled days while off the clock and not receive any compensation for
23 the hours he actually worked.
24
25
26

27 30. Plaintiff, JEFFREY VOTAW, is a resident of Leander, Texas, and was employed by
28

1 TEXAS FAMILY FITNESS from on or about March 2013 to on or about September 27, 2014, at
2 a TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
3 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
4 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
5 minimum wages, including all overtime compensation to which he was entitled for the hours worked
6 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
7 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
8 required to have actual hours worked corrected to show he worked less hours without signing in or
9 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
10 also asked to work on non scheduled days while off the clock and not receive any compensation for
11 the hours he actually worked.
12
13
14

15 31. Plaintiff, TERRY WATSON, is a resident of Terrell, Texas, and was employed by
16 TEXAS FAMILY FITNESS from on or about January 2010 to on or about March 31, 2014, at a
17 TEXAS FAMILY FITNESS located in the State of Texas as a General Manager and/or Assistant
18 General Manager. As a General Manager and/or Assistant General Manager, Plaintiff regularly
19 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
20 minimum wages, including all overtime compensation to which he was entitled for the hours worked
21 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to
22 clock out for lunch and asked to stay and still work while off the clock. Plaintiff was regularly
23 required to have actual hours worked corrected to show he worked less hours without signing in or
24 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was
25 also asked to work on non scheduled days while off the clock and not receive any compensation for
26
27
28

1 the hours he actually worked.

2 **B. Defendants**

3
4 32. Defendant, **FT FITNESS OPCO, LLC**, is a foreign Limited Liability Company
5 incorporated in the State of Delaware and whose agent for service of process is Corporation Service
6 Company d.b.a. CSC - Lawyers Incorporating Service Company , 211 E. 7th Street, Suite 620,
7 Austin, TX 78701-3218.

8
9 33. Defendant, **TXFF1 LLC**, previously known as TEXAS FAMILY FITNESS LLC,
10 is a Texas Limited Liability Company whose agent for service of process is Capitol Corporate
11 Services, Inc., 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.

12
13 34. Defendant, **TXFF2 LLC**, previously known as TEXAS FAMILY FITNESS 2 LLC,
14 is a Texas Limited Liability Company whose agent for service of process is Trevor Rogers, 2828 E.
15 Trinity Mills Rd., #225, Carrollton, TX 75006.

16
17 35. Defendant, **TXFF3 LLC**, previously known as TEXAS FAMILY FITNESS 3 LLC,
18 is a Texas Limited Liability Company whose agent for service of process is Capitol Corporate
19 Services, Inc., 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.

20
21 36. Defendant, **TXFF4 LLC**, previously known as TEXAS FAMILY FITNESS 4 LLC,
22 is a Texas Limited Liability Company whose agent for service of process is Capitol Corporate
23 Services, Inc., 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.

24
25 37. Defendant, **TXFF5 LLC**, previously known as TEXAS FAMILY FITNESS 5 LLC,
26 is a Texas Limited Liability Company whose agent for service of process is Capitol Corporate
27 Services, Inc., 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.

28 38. Defendant, **TEXAS FAMILY FITNESS 6 LLC**, is a Texas Limited Liability

1 Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity Mills Rd., #225
2 Carrollton, TX 75006.

3
4 39. Defendant, **TXFF7 LLC**, previously known as TEXAS FAMILY FITNESS 7 LLC,
5 is a Texas Limited Liability Company whose agent for service of process is Capitol Corporate
6 Services, Inc., 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.

7
8 40. Defendant, **TEXAS FAMILY FITNESS 8 LLC**, is a Texas Limited Liability
9 Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity Mills Rd., #225
10 Carrollton, TX 75006.

11 41. Defendant, **TXFF9 LLC**, previously known as TEXAS FAMILY FITNESS 9 LLC,
12 is a Texas Limited Liability Company whose agent for service of process is Capitol Corporate
13 Services, Inc., 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.

14
15 42. Defendant, **TEXAS FAMILY FITNESS 10 LLC**, is a Texas Limited Liability
16 Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity Mills Rd., #225
17 Carrollton, TX 75006.

18
19 43. Defendant, **TEXAS FAMILY FITNESS 11 LLC**, is a Texas Limited Liability
20 Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity Mills Rd., #225
21 Carrollton, TX 75006.

22 44. Defendant, **TEXAS FAMILY FITNESS OF CARROLLTON LLC**, is a Texas
23 Limited Liability Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity
24 Mills Rd., #225, Carrollton, TX 75006.

25
26 45. Defendant, **TEXAS FAMILY FITNESS OF MESQUITE LLC**, is a Texas Limited
27 Liability Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity Mills Rd.,
28

1 #225, Carrollton, TX 75006.

2 46. Defendant, **TXFFPE LLC**, previously known as TEXAS FAMILY FITNESS OF
3 PLANO LLC, is a Texas Limited Liability Company whose agent for service of process is Capitol
4 Corporate Services, 206 E. 9th St., Ste. 1300, Austin, TX 78701-4411.
5

6 47. Defendant, **TEXAS FAMILY FITNESS OF WHITE ROCK LLC**, is a Texas
7 Limited Liability Company whose agent for service of process is Trevor Rogers, 2828 E. Trinity
8 Mills Rd., #225, Carrollton, TX 75006.
9

10 **IV. FACTUAL ALLEGATIONS**

11 48. Plaintiffs allege that at all times hereinafter mentioned, Defendants have been an
12 employer and enterprise engaged in commerce within the meaning of the FLSA. Defendants have
13 employees engaged in interstate commerce. Defendants have an annual gross volume of sales made
14 or business done of not less than \$500,000.00. In addition, at all times hereinafter mentioned,
15 Plaintiffs were engaged in commerce as required by 29 U.S.C. §§206-207.
16

17 49. Plaintiffs allege that the Defendants own and operate health and fitness facilities in
18 the State of Texas and the State of Kansas. Defendants either directly or indirectly hired Plaintiffs;
19 controlled Plaintiffs' work schedules and conditions of employment; determined the rates and
20 methods of payment of wages; encouraged, prepared or promoted policies and procedures regarding
21 overtime pay; and kept records regarding Plaintiffs' employment.
22

23 50. Plaintiffs are General Managers, Assistant Managers, Sales Counselors and/or
24 Personal Trainers for TEXAS FAMILY FITNESS. Plaintiffs' duties require and/or required them
25 to sell TEXAS FAMILY FITNESS membership packages and monitor their sales numbers in
26 connection with monthly sales goals.
27
28

1 51. Plaintiffs did not: (a) manage an enterprise or a recognized department or subdivision
2 of TEXAS FAMILY FITNESS's; (b) direct the work of two or more employees; (c) have the
3 authority to hire or fire other employees, nor were their suggestions and recommendations
4 concerning hiring, firing, advancement, promotion or any other change of status of other employees
5 given particular weight; (d) perform office or non-manual work directly related to the management
6 or general business operations of TEXAS FAMILY FITNESS's or TEXAS FAMILY FITNESS's
7 customers; (e) exercise discretion or independent judgment with respect to matters of significance;
8 or (f) customarily or regularly engage away from TEXAS FAMILY FITNESS's place or places of
9 business in performing their primary duty. Moreover, the regular rate of pay of the General
10 Managers, Assistant Managers, and/or Personal Trainers, including Plaintiffs, was not in excess of
11 one and one-half times the applicable minimum hourly rate. Based on these duties and
12 responsibilities, TEXAS FAMILY FITNESS's General Managers, Assistant Managers and/or
13 Personal Trainers are clearly not exempt from the requirements of the FLSA.

14
15
16
17 52. As General Managers, Assistant Managers, Sales Counselors and/or Personal
18 Trainers, Plaintiffs routinely worked in excess of 40 hours per week throughout their employment
19 with TEXAS FAMILY FITNESS. Specifically, TEXAS FAMILY FITNESS's General Managers,
20 Assistant Managers, Sales Counselors and/or Personal Trainers, including Plaintiffs, worked between
21 50 and 100 hours per work week, depending on the time of the month and its proximity to the end
22 of TEXAS FAMILY FITNESS's monthly sales cycle and/or sales goals.
23
24

25 53. TEXAS FAMILY FITNESS's routinely required its General Managers, Assistant
26 Managers, Sales Counselors and/or Personal Trainers to clock out and continue to work off of the
27 clock and/or to falsify their time records to erroneously reflect that they worked less than they
28

1 actually did. Defendants also required the General Managers, Assistant Managers, Sales Counselors
2 and/or Personal Trainers to work off of the clock or sign false time cards which was and is a
3 common policy or scheme encouraged by the Defendants. The Defendants specifically required the
4 Personal Trainers to work off the clock performing various job duties and functions with the sole
5 goal of selling and gaining new personal training new clients. The only time the Personal Trainers
6 were allowed to be clocked in and get paid was when they were working with an actual client doing
7 personal training. The average Personal Trainer worked 10-20 hours off the clock and not paid. The
8 Defendants either knew or should have known that its General Managers, Assistant Managers, Sales
9 Counselors and/or Personal Trainers were working off the clock and not being paid the appropriate
10 regular and overtime pay rates. As a result of the Defendants' unlawful compensation policy and
11 scheme, it wrongfully denied its General Managers, Assistant Managers, Sales Counselors and/or
12 Personal Trainers hundreds of thousands of dollars of statutory-required regular and overtime pay.

13
14
15
16 54. TEXAS FAMILY FITNESS's acts violate the FLSA, which prohibits the denial of
17 payment of minimum wage for all hours worked and prohibits the denial of overtime compensation
18 for hours worked in excess of forty per work week. As described above, the Defendants' willfully
19 violated Plaintiffs' right to minimum wage and overtime compensation guaranteed under the FLSA.
20

21 **V. COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

22 55. Plaintiffs bring their Claim for Relief for Violation of the FLSA as an "opt-in"
23 collective action pursuant to Section 16(b) of the FLSA (29 U.S.C. § 216(b)), on behalf of all person
24 who were, are, or will be employed by Defendant, TEXAS FAMILY FITNESS, as General
25 Managers, Assistant General Managers, and Personal Trainers throughout the United States, at any
26 time within the applicable statute of limitations period, who have not been compensated for all
27
28

1 minimum wages and at one and one-half the regular rate of pay for all work performed in excess of
2 forty (40) hours per week.

3
4 56. Questions of law and fact common to the FLSA Collective Members as a whole
5 include, but are not limited to, the following:

6 a. Whether TEXAS FAMILY FITNESS unlawfully failed and continues to fail
7 to pay minimum wages and overtime compensation in violation of the FLSA; 29 U.S.C. §§201, et
8 seq.
9

10 b. Whether TEXAS FAMILY FITNESS's failure to pay overtime to its non-
11 exempt FLSA Collective Plaintiffs was willful within the meaning of the FLSA;

12 c. Whether TEXAS FAMILY FITNESS failed and continues to fail to maintain
13 accurate records of actual time worked by the FLSA Collective Members and prospective FLSA
14 Collective Members;
15

16 d. Whether TEXAS FAMILY FITNESS failed and continues to fail to record
17 or report all time worked by the FLSA Collective Plaintiffs and prospective FLSA Collective
18 Members.
19

20 e. Whether TEXAS FAMILY FITNESS failed and continues to fail to provide
21 accurate wage statements itemizing all actual time worked and wages earned by the FLSA Collective
22 Plaintiffs and prospective FLSA Collective Members.
23

24 57. Plaintiffs and FLSA Collective Members are similarly situated, have substantially
25 similar job requirements and pay provisions, and are subject to the Defendants' common practice,
26 policy or plan of refusing to pay overtime in violation of the FLSA and unlawfully characterizing
27 certain FLSA Collective Plaintiffs and FLSA Collective Members as exempt employees.
28

1 58. Plaintiff's claims for relief for violations of the FLSA may be brought and maintained
2 as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, for all claims asserted by the
3 Plaintiffs and the FLSA Collective Members (FLSA claims), because the claims of the Plaintiffs are
4 similar to the claims of the members of the prospective FLSA Collective Members.
5

6 59. While the exact number of FLSA Collective Members is unknown to Plaintiffs at the
7 present time, based on information and belief, there are more than 500 such persons. Thus, a
8 collective action is the most efficient mechanism for resolution of the FLSA Collective Members'
9 claims.
10

11 60. The FLSA Collective Members, on behalf of whom Plaintiffs bring this "opt-in"
12 collective action, are similarly situated because they have been or are employed in the same or
13 similar position as individually-named Plaintiffs and were subject to the same or similar unlawful
14 practices as the individually-named Plaintiffs, as described above. The number and identity of other
15 Plaintiffs yet to opt-in and consent to be a Plaintiff may be determined from the records of TEXAS
16 FAMILY FITNESS, and potential Plaintiffs may be notified of the pendency of this action utilizing
17 the payroll records of TEXAS FAMILY FITNESS. At all times during the FLSA Collective Period,
18 all of the FLSA Collective Members were employed in the same or similar job as the Plaintiffs and
19 were paid in the same manner and under the same standard employment procedures and practices
20 as the Plaintiffs.
21
22

23 61. During the FLSA Collective Period, Defendants were fully aware that the primary
24 duties of Plaintiffs and the FLSA Collective Members were inconsistent with exempt status, and
25 that the FLSA Collective Members were and are not exempt from the overtime provisions of the
26 FLSA.
27
28

1 62. The Defendants' violations of 29 U.S.C. §207(a) were repeated, willful and
2 intentional.

3 63. The Plaintiffs and the FLSA Collective Members have been damaged by said
4 violations of 29 U.S.C. §207(a).

5 64. Pursuant to 29 U.S.C. §207(a) and §216(b), Defendants are liable to the Plaintiffs and
6 the FLSA Collective Members for the full amount of all their unpaid wages, including, overtime
7 compensation, plus an additional equal amount as liquidated damages, plus the attorneys fees and
8 costs of the Plaintiffs and FLSA Collective Members who affirmatively “opt-in” to this collective
9 action.

10 65. In addition, an action under 29 U.S.C. §216(b) is superior to other available methods
11 for the fair and efficient adjudication of this controversy since the damages suffered by individual
12 members of the FLSA Collective Action may be relatively small, and the expense and burden of
13 individual trials would make it impossible for such FLSA Collective Members to individually
14 redress the wrongs done to them.

15 66. Moreover, because of the similarity of the FLSA Collective Members' claims,
16 individual actions would present the risk of inconsistent adjudications subjecting both employees
17 and Defendants to incompatible standards of conduct.

18 67. Plaintiffs are currently unaware of the identities of all the FLSA Collective Members.
19 Accordingly, Defendants should be required to provide to Plaintiffs a list of all persons employed
20 by Defendants as General Managers, Assistant General Managers, and Personal Trainers.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

4
56
7

9012

4
5

6
7
8
9

$$\begin{matrix} 0 \\ 1 \\ 2 \end{matrix}$$
4
5
6

8

1 minimum wages and overtime pay under the FLSA and are not exempt from the requirement that
2 the Defendants pay them overtime compensation under the FLSA. The FLSA Plaintiffs and FLSA
3 Collective Members are entitled to be paid overtime compensation for all overtime hours worked.
4

5 75. At all relevant times, the Defendants had a policy and practice of failing and refusing
6 to pay both minimum wages and overtime pay to its General Managers, Assistant Managers, Sales
7 Counselors and/or Personal Trainers for their hours worked in excess of forty (40) hours per week.
8 The Defendants' policy included the failure to provide and/or calculate and/or maintain records of
9 any overtime pay for all overtime hours actually worked according to Federal and State law.
10

11 76. As a result of the Defendants' failure to compensate its General Managers, Assistant
12 Managers, Sales Counselors and/or Personal Trainers, including the Plaintiffs and FLSA Collective
13 Members, for all minimum wages for hours worked and overtime wages for work performed in
14 excess of 40 hours in a work week, the Defendants has violated and continues to violate, the FLSA,
15 including 29 U.S.C. §§207(a)(1) and 215(a).
16

17 77. As a result of the Defendants' failure to record, report, credit, and/or compensate its
18 General Managers, Assistant Managers, Sales Counselors and/or Personal Trainers, including
19 Plaintiffs and FLSA Collective Members, the Defendants has failed to make, keep and preserve
20 records with respect to each of its employees sufficient to determine the wages, hours and other
21 conditions and practices of employment in violation of the FLSA, including 29 U.S.C. §§211© and
22 215(a).
23
24

25 78. The foregoing conduct, as alleged, constitute a willful violation of the FLSA within
26 the meaning of 29 U.S.C. §255(a).
27

28 79. Plaintiffs, on behalf of themselves and FLSA Collective Members, seek damages in

1 the amount of their respective unpaid overtime compensation, plus liquidated damages, as provided
2 by the FLSA, 19 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just
3 and proper.
4

5 80. Plaintiffs, on behalf of themselves and FLSA Collective Members, seek recovery of
6 their attorneys' fees and costs of bringing this action to be paid for by the Defendants as provided
7 by the FLSA, 29 U.S.C. §216(b).
8

9 **VII. DEMAND FOR JURY TRIAL**

10 81. Plaintiffs hereby demand a jury trial on all causes of action allowed by law.
11

12 **VIII. PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs, **DAVID AMSLER, ROBERTO AVILA, JOSE BENITEZ,**
14 **DUSTIN BOOKHOUT, ROLANDO CASTRO, CHACE CORBETT, GREG GAMBY,**
15 **DUSTIN GUTKOWSKI, DAMON HODGE, ROBBY KARL, LINDSEY ALLENTIA LLOYD,**
16 **JACOB MARTIN, CHRIS MAYS, HERMAN MCCORD, COLIN PADILLA, PHILIP**
17 **POLLARD, BRENTON ROBINSON, WALTER A. RUSH, III, TIM SPICER, ANTHONY**
18 **TATE, JEFFREY VOTAW, AND TERRY WATSON**, on behalf of themselves and all members
19 similarly situated pray for relief as follows:
20

21 A. Designation of this action as a collective action on behalf of the proposed FLSA
22 Collective Members asserting FLSA claims, and prompt issuance of notice pursuant to 29 U.S.C.
23 §216(b) to all similarly situated members of the FLSA Opt-In action, apprizing them of the
24 pendency of this action, and permitting them to assert timely FLSA claims in this action by filing
25 individual Consent to Sue forms pursuant to 29 U.S.C. §216(b), and a tolling of the statute of
26 limitations on the FLSA Collective Members' claims until the FLSA Collective Members are
27
28

1 provided with reasonable notice of the pendency of this action and a fair opportunity to exercise their
2 right to Opt-in as Plaintiffs;

3
4 B. Designation of Plaintiffs, **DAVID AMSLER, ROBERTO AVILA, JOSE**
5 **BENITEZ, DUSTIN BOOKHOUT, ROLANDO CASTRO, CHACE CORBETT, GREG**
6 **GAMBY, DUSTIN GUTKOWSKI, DAMON HODGE, ROBBY KARL, LINDSEY**
7 **ALLENTIA LLOYD, JACOB MARTIN, CHRIS MAYS, HERMAN MCCORD, COLIN**
8 **PADILLA, PHILIP POLLARD, BRENTON ROBINSON, WALTER A. RUSH, III, TIM**
9 **SPICER, ANTHONY TATE, JEFFREY VOTAW, AND TERRY WATSON**, as representatives
10 of the FLSA Collective Members;

11
12 C. A declaratory judgment that the practices complained of herein are unlawful under
13 the Fair Labor Standards Act, 29 U.S.C §§201, et seq.;

14
15 D. An injunction against TEXAS FAMILY FITNESS and its officers, agents, successors,
16 employees, representatives, and any and all persons acting in concert with it, as provided by law,
17 from engaging in each of the unlawful practices, policies and patterns set forth herein;

18
19 E. An award of damages, including liquidated and exemplary damages and waiting time
20 penalties and other statutory penalties to be paid by TEXAS FAMILY FITNESS;

21
22 F. Costs of action incurred herein, including reasonable attorneys' fees, expert fees and
23 litigation expenses;

24 G. Pre-Judgment and post-Judgment interest, as provided by law;

25
26 H. Any and all other and further legal and equitable relief as this Court deems necessary,
27 just and proper; and

28 I. Plaintiffs pray for a jury trial on all causes of action allowed by law.

1 RESPECTFULLY SUBMITTED:

2
3 BY: /s/ *Richard C. Dalton*

4 Richard C. Dalton

5 Texas Bar No. 24033539

6 Louisiana Bar No. 23017

7 California Bar No. 268598

8 1343 West Causeway Approach

9 Mandeville, Louisiana 70471

10 E-mail: rdalton746@aol.com

11 Tel. (985) 778-2215

12 Fax: (985) 778-2233

13
14 ATTORNEY FOR PLAINTIFFS
15
16
17
18
19
20
21
22
23
24
25
26
27
28